

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1033 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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NUTAN MECHANICAL WORKS

Versus

MAHANT RAMDEV DASJI GURU J.

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Appearance:

MR HM PARIKH for Petitioner

MR KI SHAH for Respondent No. 1- absent

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/03/2000

ORAL JUDGEMENT

#. Whether the tenant who is using the open piece of land as a land appurtenant to the rented premises can approach the Small Causes Court against the obstruction of such right by the landlord or whether he has to go to regular court for such relief is the issue involved in

the present revision application.

#. The present revision application has been filed by the petitioner- original plaintiff. The plaintiff had filed the suit being Rent Suit No.944/78 in the court of Additional Sessions Judge, Small Causes Court at Surat. The case of the plaintiff in the said suit is that the suit land is situated on the southern side of the workshop of which the plaintiff is the tenant and the said land is included in the rented premises. According to the plaintiff the defendant is the landlord and owner of the property situated in ward no.7, Survey no.283. According to the plaintiff he is a tenant of constructed portion of one gala and open land situated on the southern side of one gala which is in the form of garage is rented to him at the rate of Rs.51/-p.m. The plaintiff is doing business of running work-shop of manufacturing heavy articles in the aforesaid constructed portion of the premises. It is his case that open land situated on the southern side of the garage is also in his possession as a tenant. It is his specific case that without using open land it is not possible for him to use the constructed portion of the premises which the plaintiff is occupying as a tenant. It is his case that he is using the aforesaid open space situated on the southern side of his garage for the purpose of bringing heavy articles, gas cylinder etc, in substance it is his case that without using the aforesaid passage of open land it is not possible for him to use the constructed garage portion of which he is the tenant. The defendant tried to make certain construction in the said open space and therefore according to the plaintiff he is trying to evict him from the rented premises. Hence the aforesaid suit for declaration and injunction was instituted by the plaintiff against the defendant. It is the case of the plaintiff that alternatively, if it is held that he is not the tenant of the open land situated on the southern side of the workshop, the plaintiff has got right of passage for brining goods, and taking away his goods from the workshop through the aforesaid open space and therefore the defendant has no right to close the said open space by making construction over the same. On the aforesaid grounds the plaintiff had filed the said suit for declaration and injunction.

#. The defendant appeared in the suit by filing his written statement at Ex.16. He denied the averments made in the plaint by the plaintiff. The defendant admitted that the plaintiff is the owner of the constructed portion i.e. garage. However, he denied that the defendant is the tenant of the open land. He denied

other averments made in the plaint. It was the case of the defendant that the open land was of the ownership of the Corporation and that the same was sold to the defendant by the Corporation under the Town Planning Scheme. It was stated by the defendant that while making the construction he is going to keep some land open for the purpose of passage for the plaintiff for coming and going to the workshop. It was also contended that the rent court has no jurisdiction to decide the suit on the aforesaid grounds the suit of the plaintiff was resisted by the defendant.

#. The learned trial judge came to the conclusion that so far as the claim of the plaintiff regarding tenancy of open land is concerned the plaintiff has failed to establish such tenancy right. However, it was found that the plaintiff is entitled to use the said land as a passage for the purpose of effective use of his rented premises i.e. his workshop. The trial court also came to the conclusion that it has jurisdiction to decide the suit. So far as the prayer for declaration regarding the tenancy right is concerned the same was rejected by the trial court. However, the trial court decreed the suit for the purpose of injunction and injunction regarding 10' X 30' feet for open land was granted by the trial court. The aforesaid decree of the trial court was challenged by the defendant by way of Regular Civil Appeal No.324/82. The aforesaid appeal was heard by the Asstt. Judge, Surat, who by his judgment and order dtd.3.7.86 allowed the same. The learned appellate judge came to the conclusion that the rent court has no jurisdiction to hear and decide the suit in question and on the basis of the aforesaid reasonings the plaint was ordered to be returned for the purpose of presentation to the proper court. The aforesaid order of the appellate court is impugned in the present revision application at the instance of the original plaintiff.

#. At the time of admission of this revision application this court ( Coram: M.B.Shah, J as he then was) had pass the following order on 1.9.86.

"Rule. The operation of the order passed by the Assistant Judge, Surat is stayed. It is clarified that pending, hearing and disposal of this revision application the judgment and order passed by the trial court on 1.9.82 would remain in force.:

#. At the time of hearing of this revision applicatin Mr.Parikh, learned advocate for the petitioner is

present. Mr.K.I.Shah, learned advocate for the respondent is not present.

#. It was contended by Mr.Parikh that in the plaint the plaintiff has clearly mentioned that there is no way left for the plaintiff to approach the rented premises i.e. workshop if the defendant is allowed to construct on the said open land. It is specifically stated in the plaint that there is no way available to the plaintiff for reaching his workshop without the help of the aforesaid open land. It is no doubt true that the plaintiff was asserted his right about tenancy regarding the open land, however, there is a specific alternative case also in para 4 of the plaint to the effect that if it is found that the plaintiff is not the tenant of the open land then also in order to use the rented premises and for purpose of beneficial use of the same it is necessary for the plaintiff to use the aforesaid open space, otherwise it is not possible for the plaintiff to use the rented premises at all. The defendant resisted the claim of the plaintiff regarding tenancy and it was found by the trial court that the plaintiff has failed to prove his tenancy right over the open piece of land. In the written statement at para 4 the defendant has stated that he is going to keep small portion of the land available for the purpose of passing and repassing from the rented premises. The averments of the defendant in the written statement would also prima facie show that this open piece of land is only place available for the plaintiff for approaching the rented premises. On the appreciation of the evidence, the trial court reached to the conclusion that 10' x 30' feet of the land is required to be kept open for the plaintiff. The aforesaid part of the decree of the trial court was under challenge before the appellate court, at the instance of the defendant-landlord. The appellate court however came to the conclusion that since the open piece of the land is not part and parcel of the rented premises, the rent court will have no jurisdiction to decide the suit in question. In view of the aforesaid position it is required to be considered whether the suit in the present form was maintainable before the Small Causes Court or not. Since the appellate court has not decided the appeal on merits. The only question which is required to be considered in this revision application is regarding the jurisdiction of the rent court for the purpose of deciding the controversy in the suit.

#. I have gone through the plaint as well as the written statement. It is the specific case of the plaintiff that he is a tenant of the open land or alternatively he is

using the land in question for the purpose of effective use of the rented premises. The learned appellate judge has completely lost the sight of the controversy between the parties by observing that the premises which are not let out are trespassed upon by the tenant. It is not even the case of the landlord that the tenant has trespassed upon the land in question. At this stage, it is useful to refer to the judgment of this court in 20 GLR P.469. The learned appellate judge has also relied upon the said judgment in his order. In that case the suit was filed by the landlord on the ground that the premises were trespassed by the tenant and that the same was never rented to the defendant. In the background of the aforesaid facts, this court came to the conclusion that if a suit is filed against the defendant as a trespasser, the court under Sec.28 (1) will have no jurisdiction to decide such suit. It has been held that, for the purpose of deciding the jurisdiction of the court, the averments made in the plaint is to be considered and that the suit cannot be decided on averments made in the written statement. Since in the said case the plaintiff had filed the suit on title, and in view of the aforesaid averments made in the plaint it was found that the Civil Court was competent to decide the suit. In the present case the plaintiff has clearly gone to the rent court with a prayer that he is a tenant of the open piece of land or alternatively open piece of land is required for effectively using the suit property. In my view, therefore, the judgment of 20 GLR P.469 is helpful to the plaintiff rather than to the defendant. Looking to the averments of the plaint it cannot be said that the rent court had no jurisdiction to decide the suit in question. In 20 GLR P.762 it has been held that the dispute in respect of a particular portion of the premises let out to the defendant and if there is a dispute about the same suit for declaration, and injunction, is maintainable in the Small Causes Court. In the aforesaid case the plaintiff-tenant had filed the suit against the landlord for a declaration that he was tenant in respect of Khadki, open chawk and the loft alongwith the other rented portion of the property. The defendant denied the case of the plaintiff about his tenancy rights in the aforesaid Khadki, open chawk etc. This court came to the conclusion that the tenant can claim the declaration of his tenancy as protected by the Rent Act and the claim directly arises out of the provision of Rent Act. The expression " any claim..... arising out of the Act or any of its provisions" used in Sub-Sec.(1) of Sec.28 includes the claim to a contractual tenancy protected by the Rent Court and declaration in respect thereof. Therefore the suit for declaration and

permanent injunction by the tenant against the landlord is maintainable and therefore the Small Causes Court had jurisdiction to entertain the suit. Mr.Parikh has relied upon the judgment of 20 GLR P.1002. In that case the landlord had prevented the tenant from using latrine which was situated on the outer side of the rented premises. It was found by this court that such claim was a claim arising out of the provision of the Rent Act and without any access to the latrine, the premises let out to the plaintiff will be rendered unusable or uninhabitable. Such type of suit was found to be competent before the rent court.

#. Mr.Parikh has also relied upon 34 (2) G.L.R. P.1083. In the aforesaid judgment this court has taken a view that the word "Appurtenant" has diverse meanings depending upon the context in which it is used. the portion of the land which is closely connected with the building may be included as part and parcel of demised premises but entire open parcel of land cannot be called "appurtenant" Tenant cannot obstruct the landlord from making construction on the open parcel of land which is not "appurtenant" to the demised premises. This court has also further found that it is not possible to give or formulate a precise meaning of the word "appurtenant". The word has diverse meanings depending upon the context in which it is used. It is also further stated by this court that the premises to be appurtenant must be premises inevitably implied in and essential to the use and enjoyment of the premises let. At this stage reference to Sec.5 (8) of the Rent Act is also required to be made. As per the same the premises includes any building or part of building let separately ( other than the farm building) including godown, ground, garage and out houses, if any appurtenant to such without or part of the building. Therefore the Small Causes Court will have jurisdiction even to decide incidental questions i.e. that whether the strip of open land used by the tenant can be said to be a land appurtenant to the suit premises and whether the tenant can effectively use his rented premises without any help of such open strip of land. All those questions, therefore can certainly be decided by Small Causes Court by exercising the power under Sec.28 of the Rent Act. Looking to the plaint of the present case it cannot be said that the rent court had no jurisdiction to decide the controversy in question. The learned appellate judge was therefore not right in returning the plaint, which was validly instituted before the competent court. Therefore, it cannot be said that the suit in question was not maintainable before the rent

court. It is therefore not possible to agree with the reasonings given by the learned Dist. Judge that the suit is not maintainable before the rent court. Even otherwise, for the purpose of deciding the jurisdiction of the court it is the averments in the plaint which is essential and not the averments made in the written statement. In view of the aforesaid order of the appellate court is required to be set aside and since the appellate court has not decided the appeal on merit, matter shall have to be sent back to the appellate judge for the purpose of deciding the same on merit. Accordingly the order regarding returning of the plaint is set aside. The appellate court shall rehear the Regular Civil Appeal No.324/82 on merits and same be disposed of in accordance with the law. Revision Application accordingly allowed. Rule is made absolute to the aforesaid extent. Since the proceedings are very old, the parties are directed to appear before the learned appellate judge on 24.4.2000 for the purpose of taking the date of hearing of the appeal. R & P to be sent back forthwith.

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